

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 4/18/90, see Public Defense Department(650), Ch 9]
[Prior to 5/12/93, Disaster Services Division(607), Ch 5]

The emergency management division of the public defense department hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

605—5.1(22) Definitions. As used in this chapter:

"Agency." In lieu of the words "agency issuing these rules", insert "Emergency Management Division".

"Custodian." Delete "agency" and insert "Emergency Management Administrator".

"Federal records" means all records, documents, tape, or other information, stored or preserved in any media, the maintenance, use, or disclosure of which is governed by federal government law or regulation.

"Records" or "state records" means all or part of a "public record" as defined in Iowa Code section 22.1 but does not include federal records as here defined.

605—5.3(22) Requests for access to records.

5.3(1) In lieu of the words "(insert agency head)" insert "administrator". In lieu of the words "(insert agency name and address)", insert "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".

5.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" insert "8 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

5.3(7) Fees.

c. Supervisory fee. In lieu of the words "(specify time period)" insert "one-half hour".

605—5.6(22) Procedure by which a subject may have additions, dissents, or objections entered into the record. In lieu of the words "designate office" insert the words "Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319".

605—5.7(22) Consent to disclosure by the subject of a confidential record. Insert at the end of the model rule the following new sentence. "For federal records maintained by the emergency management division, a subject will provide a privacy act release in accordance with the requirements of Title 5 United States Code, Section 552, in writing, and signed by the subject of the record."

605—5.8(22) Notice to suppliers of information. Insert at the end of the model rule the following new sentence. "For federal records and forms the United States Government's determination of routine use and the consequences of failure to provide required or optional information as requested shall be provided to the supplier of information."

605—5.9(22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 5.10(22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

605—5.10(22) Routine use.

5.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

5.10(2) Reserved.

605—5.11(22) Consensual disclosure of confidential records.

5.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(22).

5.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

5.11(3) Obtaining information from a third party. The division may be required to obtain information from a third party. The agency may be required to obtain information to establish eligibility, determine the amount of assistance, provide services, or other purposes necessary to the administration of a program. Requests to third parties for this information may involve the release of confidential identifying information about an individual. Except as provided in rule 5.10(22), the agency may make these

requests only when the individual has authorized the release on a department form designed for this purpose.

605—5.12(22) Release to subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about the person as provided in rule 5.6(22). However, the agency need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of the law.
- b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))
- d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

605—5.13(22) Availability of records.

5.13(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- b. Tax records made available to the agency. (Iowa Code section 422.20, 422.72)
- c. Records which are exempt from disclosure under Iowa Code section 22.7.
- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”
- f. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.
 (See Iowa Code sections 17A.2, 17A.3)
- g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.
- h. Any other records made confidential by law.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute

which authorizes limited or discretionary disclosure as provided in rule 5.4(22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

605—5.14(22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

5.14(1) Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

5.14(2) Copies of local commission files maintained by the agency to assist them in following merit principles in their employment practices as it relates to employment of emergency management coordinators in Iowa Code section 29C.10. These records may contain information about individuals, some of which may be confidential.

5.14(3) Fiscal records are maintained pursuant to Iowa Code section 29C.14. These records are stored on paper and electronically. These records may contain information about individuals, some of which may be confidential.

5.14(4) Records of individuals attending training programs pursuant to CPG 1-3, dated August 1992. These records are stored on paper, electronically, or both, depending upon the specific type of record. These may contain confidential information.

5.14(5) Records maintained by the agency which contain radiation exposure of individuals pursuant to 641—40.20(1) or NUREG, Title 10, dated December 30, 1982. These records are stored on paper.

5.14(6) Records maintained by the agency on the hearing and mobility impaired as required by Federal Emergency Management Agency Guidance Memorandum #24, dated April 5, 1984.

5.14(7) Local emergency planning committee member listing for each county. These records are collected and maintained under the authority of P.L. 99-499.

5.14(8) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

5.14(9) FEMA code for classified information. Insert "Safeguard information records pertaining to radioactive shipments pursuant to 10 CFR 73.21, effective October 22, 1981."

605—5.15(22) Federal records. Pursuant to Iowa Code section 22.9, the division finds that maintenance, use, or disclosure of federal records described in this rule, except as allowed by federal law and regulation, would result in denial to the agency of United States government funds, services and essential information that would otherwise definitely be available and have in the past been available to the agency. The following record systems are maintained by the agency under a Comprehensive Coopera-

tive Agreement (CCA) with the Federal Emergency Management Agency (FEMA) under the provisions of Civil Preparedness Guide (CPG) 1-3. The agency has the authority to enter into contracts and obtain funds pursuant to Iowa Code chapter 29C and Title 50, U.S. Code, appendix section 2251. The program is Individual Mobilization Augmentee (IMA) (CPG 1-11). In exchange for grant funds the agency prepares, conducts, and compiles civil preparedness statements of work.

Another record system maintained by the agency under Title 50, U.S. Code, appendix section 2251, is National Security Information disseminated from a classified exercise to coordinate state federal activity during a national security event. The records maintained by the agency which are used to perform the various tasks required under law or agreement are required by the division to be kept confidential. 44 CFR 5.71 effective October 1, 1986, FEMA Manual 2100.2 (IMA Rules and Regulations) and FEMA Manual 1200.1 (Safeguarding National Security Information) specifically prohibits disclosure of the data collected by the agency or provided to the agency by FEMA. These records might not otherwise be considered confidential under Iowa Code section 22.7. Pursuant to Iowa Code section 22.9 the requirement of categorizing the records below as open and discloseable to the public may be waived to prevent the denial of federal funds. It is hereby determined that the provisions of Iowa Code chapter 22, which would otherwise require disclosure of the following records, shall be waived in order that the agency may continue with FEMA and continue to receive federal funds. The particular provisions which must be waived are:

Iowa Code section 22.2 (Right to examine public records—exception), Iowa Code section 22.5 (Enforcement of rights), and Iowa Code section 22.6 (Penalty). The following records are the subjects of the above determination:

IMA Reports: This record system contains employer military data (Army Regulation 340-17 and Air Force Regulation 12-30) recorded on Department of Army Forms 67-8 and 2166-6; and Air Force Form 707.

Safeguarding National Security Information: Federal classified documents (National Security Decision Directive number 259) pertaining to Civil Defense and accessible from a combination safe by personnel with National Security Clearance. Copies of these statutes may be obtained at the cost of reproduction from the Emergency Management Division Administration, Hoover State Office Building, Des Moines, Iowa 50319.

605—5.16(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(22). The records listed may contain information about individuals. All records are stored on paper unless otherwise noted.

5.16(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

5.16(2) Commission records. Agendas, minutes, and materials presented by the IER Commission may be available from the division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code subsection 21.5(4). Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

5.16(3) Publications. News releases, annual reports, project reports, agency newsletters, etc., are available from the division. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency committees. This information is not retrieved by individual identifier, and may be stored on an automated data processing system.

5.16(4) Statistical reports. Periodic reports of disaster/emergency incidents are compiled. These statistics do not contain personally identifiable information.

5.16(5) Grants. Records on persons receiving grants for training are available through the agency. These records may contain information about employees of a grantee. This information is not retrieved by individual identifier, and is not stored on an automated data processing system. The information is collected under the authority of CPG 1-3, dated August 1992.

5.16(6) Licensing, registration, and approval. Records which pertain to applicants for a license registration, or certificate of approval from the agency are open to the public. Records which identify particular persons served by the applicant such as incident reports or complaint investigations are not open to the public. These records may contain information about individuals. The information is collected under the authority of Iowa Code chapter 29C.

5.16(7) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 5.13(22) or 5.14(22). These records may contain information about individuals.

5.16(8) Published materials. The division uses legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.16(9) Policy manuals. Policy or program manuals of various programs may be obtained by contacting the division.

5.16(10) All other records that are not exempted from disclosure by law that generally do not contain information pertaining to named individuals are available to the public.

5.16(11) Other records used by this agency which may not otherwise be accounted for by these rules include correspondence files, surveys conducted by programs, information and data files, and records used for processing purposes internally. Some of the records may contain information about individuals. Correspondence files may contain confidential information protected by statutes cited in rule 5.13(22) or 5.14(22).

5.16(12) Except where otherwise noted, data processing systems used by this agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another system.

605—5.17(22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

605—5.18(22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records and federal records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to, records or federal records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

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